

AS-AVAILABLE CAPACITY AGREEMENT

BETWEEN

DUKE ENERGY CAROLINAS, LLC

AND

DUKE ENERGY PROGRESS, INC.

(Duke Energy Carolinas, LLC Rate Schedule No. ____)

(Duke Energy Progress, Inc. Rate Schedule No. ____)

Tariff Submitter: Duke Energy Carolinas, LLC
FERC Tariff Program Name: FERC FPA Electric Tariff
Tariff Title: Tariffs, Rate Schedules and Service Agreements
Tariff Record Proposed Effective Date: _____, 2014
Tariff Record Title: Capacity Transfer Agreement
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TABLE OF CONTENTS

ARTICLE I DEFINITIONS	2
ARTICLE II TERM OF AGREEMENT	2
2.1 Term	2
ARTICLE III SCOPE OF THE AGREEMENT	3
3.1 Purpose	3
3.2 Limits on Scope and Effect of the Agreement	3
ARTICLE IV MAKING CAPACITY AVAILABLE	3
4.1 Quantity	3
4.2 Duration	3
4.3 Firm Transmission	4
4.4 Consideration	4
4.5 No Energy; No Modification of JDA	4
ARTICLE V RESERVED	4
ARTICLE VI COMPLIANCE WITH CONTRACTUAL AND REGULATORY OBLIGATIONS	4
ARTICLE VII RESERVED	5
ARTICLE VIII INDUSTRY STANDARDS	5
8.1 Adherence to Reliability Criteria	5
ARTICLE IX GENERAL	5
9.1 No Third Party Beneficiaries	5
9.2 Waivers	6
9.3 Successors and Assigns	6
9.4 Liability and Indemnification	6
9.5 Section Headings	6
9.6 Notice	6
ARTICLE X REGULATORY APPROVAL	7
10.1 Regulatory Authorization	7
10.2 Changes	7
ARTICLE XI COMPLIANCE WITH NCUC REGULATORY ORDERS	7
11.1 DEC and DEP Regulatory Conditions	7

AS-AVAILABLE CAPACITY AGREEMENT

THIS AS-AVAILABLE CAPACITY AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2014, by and between Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, Inc., formerly known as Progress Energy Carolinas, Inc. ("DEP") (collectively referred to herein as the "Parties" and individually as a "Party").

WHEREAS, DEC and DEP are subsidiaries of Duke Energy Corporation; and

WHEREAS, DEC AND DEP are owners and operators of separate electric generation, transmission and distribution facilities and are engaged in the business of generating, transmitting, distributing, and selling electric energy to the retail customers in their respective franchised service areas in North Carolina and South Carolina and also at wholesale to their respective municipal and cooperative customers and off-system customers; and

WHEREAS, DEC and DEP jointly dispatch their power supply resources in order to most economically serve the native load customers of both DEC and DEP under the Joint Dispatch Agreement ("JDA");

WHEREAS, the JDA provides for the transfer of energy between the Parties and the sharing of savings resulting from joint dispatch between the Parties but does not provide for one Party to make Capacity available to the other Party; and

WHEREAS, the Parties desire to establish a framework under which they can make temporarily excess Capacity available to each other in order to most economically serve the native load customers of both DEC and DEP; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the Parties mutually agree as follows:

ARTICLE I DEFINITIONS

Capitalized terms shall have the meanings set forth below in this Article I. If a capitalized term is not defined below, it shall have the meaning provided elsewhere in this Agreement or as commonly used in the electric utility industry.

"Balancing Authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

"Balancing Authority Area" or "BAA" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority within which the Balancing Authority maintains the load-resource balance.

"Capacity" means the capability to generate electrical energy.

"FERC" means the Federal Energy Regulatory Commission.

“Industry Standards” means all applicable national and regional electric reliability council principles, guides, criteria, and standards and industry standard practices.

“JDA” means the Joint Dispatch Agreement between the Parties effective July 2, 2012, as it may be amended.

“NCUC” means the North Carolina Utilities Commission.

“OATT” means the Joint Open Access Transmission Tariff of DEP, DEC, and Duke Energy Florida, Inc., as amended from time to time.

“PSCSC” means the Public Service Commission of South Carolina.

“VACAR” means the Virginia-Carolinas sub region within the North American Electric Reliability Corporation's (NERC) SERC Reliability Corporation (SERC).

“VACAR Reserve Sharing Group Arrangement” means the collection of agreements and procedures developed concurrently by the Principals and Operating Representatives of multiple two-party Interchange Agreements as described in the Operating Manual for the VACAR Reserve Sharing Group Arrangement, Revision No. 2, dated January 11, 2011 by and among Dominion, DEC, DEP, South Carolina Electric & Gas Company and South Carolina Public Service Authority, as amended.

ARTICLE II TERM OF AGREEMENT

2.1 Term.

Subject to approval and any conditions imposed by state and federal regulatory authorities, this Agreement shall take effect upon a date designated by mutual agreement of the Parties, which shall occur after acceptance or approval of this Agreement without material modification by the NCUC, the PSCSC, and the FERC and shall terminate one (1) year from its effective date. If the Parties mutually agree to enter into a similar arrangement before the termination of this Agreement, both Parties shall take such action as is required by the applicable regulatory conditions.

ARTICLE III SCOPE OF THE AGREEMENT

3.1 Purpose.

The purpose of this Agreement is to provide the contractual basis for one Party to make temporarily excess Capacity available to the other Party in order to reduce the cost of serving their respective native load customers in a manner consistent with Industry Standards and applicable laws and regulations.

3.2 Limits on Scope and Effect of the Agreement.

(a) Nothing in this Agreement is intended to or shall it be construed as:

- (i) Providing for or requiring a single integrated electric system;
- (ii) Providing for or requiring a single BAA, control area or transmission system;
- (iii) Providing for or requiring joint planning or joint development of generation or transmission;
- (iv) Providing for or requiring a Party to construct generation or transmission facilities for the benefit of the other Party;
- (v) Transferring any rights to specific generation or transmission facilities from one Party to the other (except for the transfer of temporarily excess Capacity as specifically set forth herein); or
- (vi) Providing for or requiring any equalization of the Parties' production costs or rates.

(b) To the extent that the Parties desire to engage in any of the activities or take any of the actions described in Section 3.2(a), the Parties will enter into a separate agreement, subject to approval by the applicable state and federal regulatory authorities.

ARTICLE IV MAKING CAPACITY AVAILABLE

4.1 Quantity.

DEC and DEP may make temporarily excess Capacity available to each other for time periods when the following circumstances exist: (1) one Party (the "Provider") is projected to have more Capacity than is required to meet applicable reliability standards and (2) the other Party (the "Recipient") has determined that it would benefit from an acquisition of Capacity from the Provider. Nothing in this Agreement will require that a Party maintain or construct Capacity to be available for the other Party in any amount at any time.

4.2 Duration.

The duration for which a Party makes its temporarily excess Capacity available to the other Party hereunder may be for any time period up to a maximum of one week.

4.3 Firm Transmission.

For any time period for which the Parties make temporarily excess Capacity available hereunder as provided in Section 4.1 of this Agreement, the Recipient shall procure firm transmission service into the BAA of the Recipient for the full quantity of such Capacity for such

time period. Any such procurement of firm transmission service will be made under the terms of the OATT. No transmission service will be provided under this Agreement. The Parties expressly acknowledge their obligations to comply with any applicable commitments that the Parties may have to reserve for third parties firm transmission from the BAA of DEC into the BAA of DEP East under the market power mitigation plan accepted by FERC by order issued June 8, 2012 at para. 89, 31-33, in FERC Docket No. EC11-60. Nothing herein is intended to modify such commitments.

4.4 Consideration.

Each of the Parties acknowledges that the purpose of its participation in the temporarily excess Capacity arrangement provided for hereunder is to more economically operate each of their systems while maintaining reliability. This is expected to result in reduced capacity costs for both Parties and to facilitate greater utilization of the JDA, the savings from which are shared by the Parties under the provisions of the JDA. Accordingly, each of the Parties agrees to make temporarily excess Capacity available to the other Party under the terms hereof for no additional monetary compensation.

4.5 No Energy; No Modification of JDA.

The Parties will not buy and sell energy under this Agreement. Energy transactions between the Parties will occur under the provisions of the JDA. Nothing in this Agreement is intended to modify or alter any of the provisions of the JDA.

ARTICLE V RESERVED

ARTICLE VI COMPLIANCE WITH CONTRACTUAL AND REGULATORY OBLIGATIONS

Nothing in this Agreement is intended to diminish or alter the jurisdiction or authority of the NCUC or the PSCSC over the Parties, including, among other things, the jurisdiction and authority to establish the retail rates on a bundled basis for each of the Parties, to impose regulatory accounting and reporting requirements, to impose service quality standards, to require each of the Parties to engage separately in least cost integrated resource planning, or to issue certificates of public convenience and necessity for new generating resources. In addition, nothing in this Agreement is intended to alter the Parties' contractual or regulatory obligations or to provide for Capacity transfers in a fashion that is inconsistent with those obligations, including, without limitation, the following:

(a) DEC's obligation to plan for and provide least cost electric service to its native load customers, and DEP's obligation to plan for and provide least cost electric service to its native load customers;

(b) All of DEC's and DEP's respective obligations under wholesale purchase contracts, including contracts for the purchase of energy and Capacity on a non-dispatchable basis;

(c) All of DEC's and DEP's respective obligations under wholesale sales contracts, including obligations under full and partial requirements sales contracts;

(d) All of DEC's and DEP's respective obligations under reliability exchange agreements existing prior to the effective date of this Agreement;

(e) DEC's and DEP's respective transmission rights and obligations, including rights and obligations under any transmission service agreements or transmission tariffs and their respective obligations to provide transmission services and to act as the Balancing Authority for their respective BAAs; and

(f) DEC's and DEP's respective individual obligations under the VACAR Reserve Sharing Group Arrangement.

ARTICLE VII RESERVED

ARTICLE VIII INDUSTRY STANDARDS

8.1 Adherence to Reliability Criteria.

The Parties agree to conform to Industry Standards applicable reliability criteria and agreements as they affect the Parties' implementation and performance of this Agreement.

ARTICLE IX GENERAL

9.1 No Third Party Beneficiaries.

This Agreement does not create rights of any character whatsoever in favor of any person, corporation, association, entity or power supplier, other than the Parties, and the obligations herein assumed by the Parties are solely for the use and benefit of said Parties. Nothing in this Agreement shall be construed as permitting or vesting, or attempting to permit or vest, in any person, corporation, association, entity or power supplier, other than the Parties, any rights hereunder or in any of the resources or facilities owned or controlled by the Parties or the use thereof.

9.2 Waivers.

Any waiver at any time by a Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or matter. Any delay, short of the statutory period of limitation, in asserting or enforcing any right under this Agreement, shall not be deemed a waiver of such right.

9.3 Successors and Assigns.

This Agreement shall inure to the benefit of and be binding only upon the Parties and their respective successors and assigns, and shall not be assignable by any Party without the

written consent of the other Party except to a successor in the operation of its properties by reason of a merger, consolidation, sale or foreclosure whereby substantially all such properties are acquired by or merged with those of such a successor, subject to all relevant state and federal regulatory approvals. Prior to any assignment occurring, approval of the NCUC and the PSCSC must be obtained.

9.4 Liability and Indemnification.

Subject to any applicable state or federal law which may specifically restrict limitations on liability, each Party shall release, indemnify, and hold harmless the other Party, its directors, officers and employees from and against any and all liability for loss, damage or expense alleged to arise from, or incidental to, injury to persons and/or damage to property in connection with its facilities or the production or transmission of electric energy by or through such facilities, or related to performance or non-performance of this Agreement, including any negligence arising hereunder. In no event shall any Party be liable to another Party for any indirect, special, incidental or consequential damages with respect to any claim arising out of this Agreement.

9.5 Section Headings.

The descriptive headings of the Articles and Sections of this Agreement are used for convenience only and shall not modify or restrict any of the terms and provisions thereof.

9.6 Notice.

Any notice or demand for performance required or permitted under any of the provisions of this Agreement shall be deemed to have been given on the date of such notice, in writing, is deposited in the U.S. mail, postage prepaid, certified or registered mail, addressed to:

Director System Optimization
526 South Church Street
Charlotte, NC 28202

Director Power Trading & Dispatch
526 South Church Street
Charlotte, NC 28202

or in such other form or to such other address as the Parties may stipulate.

ARTICLE X REGULATORY APPROVAL

10.1 Regulatory Authorization.

The effectiveness of this Agreement is subject to and conditioned upon:

(a) Acceptance for filing without material condition or modification by the FERC;
and

(b) The Parties obtaining all necessary approvals from state regulatory authorities to enter into the Agreement, in all cases without material condition or modification.

10.2 Changes.

It is contemplated by the Parties that it may be appropriate from time to time to change, amend, modify or supplement this Agreement to reflect changes in operating practices or costs of operations or for other reasons. Any such changes to this Agreement shall be in writing executed by the Parties, subject to all necessary state and federal regulatory authorizations.

**ARTICLE XI
COMPLIANCE WITH NCUC and PSCSC REGULATORY CONDITIONS**

11.1 DEC and DEP Regulatory Conditions.

In compliance with NCUC and PSCSC regulatory conditions, the Parties agree as follows:

(a) To the extent Capacity transfers under this Agreement result in transfers of control of, or operational responsibility for, DEC's generation assets used for the generation of electric power for DEC's North Carolina retail customers, then:

(i) DEC will not commit to or carry out the transfer except in accordance with all applicable law, and the rules, regulations, and orders of the NCUC and PSCSC promulgated thereunder; and

(ii) DEC will not include in its North Carolina or South Carolina cost of service or rates the value of the transfer, whether or not subject to federal law, except as allowed by the NCUC and PSCSC in accordance with North Carolina and South Carolina law.

(b) To the extent Capacity transfers under this Agreement result in transfers of control of, or operational responsibility for, DEP's generation assets used for the generation of electric power for DEP's North Carolina or South Carolina retail customers, then:

(i) DEP will not commit to or carry out the transfer except in accordance with all applicable law, and the rules, regulations, and orders of the NCUC and PSCSC promulgated thereunder; and

(ii) DEP will not include in its North Carolina or South Carolina cost of service or rates the value of the transfer, whether or not subject to federal law, except as allowed by the NCUC and PSCSC in accordance with North Carolina and South Carolina law.

(c) (i) The participation by both DEC and DEP in this Agreement is voluntary, neither DEC nor DEP is obligated to participate in this Agreement or to make any purchases or sales pursuant hereto, and the participation of both DEC and DEP in this Agreement is subject to termination, pursuant to Section 2.1 of this Agreement.

(ii) DEC or DEP may not make or incur a charge under this Agreement except in accordance with North Carolina and South Carolina law and the rules, regulations and orders of the NCUC and PSCSC promulgated thereunder;

(iii) DEC or DEP may not seek to reflect in rates any (A) costs incurred under the agreement exceeding the amount allowed by the NCUC and PSCSC or (B) revenue level earned under the agreement less than the amount imputed by the NCUC and PSCSC; and

(iv) Neither DEC nor DEP shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of another entity's assertions, that the NCUC's and PSCSC's authority to assign, allocate, impute, make pro forma adjustments to, or disallow revenues and costs for retail ratemaking and regulatory accounting and reporting purposes is, in whole or in part, (A) preempted by federal law or (B) not within the NCUC's or PSCSC's power, authority or jurisdiction; DEC and DEP will bear the full risk of any preemptive effects of federal law with respect to this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and attested by their duly authorized officers on the day and year first above written.

DUKE ENERGY CAROLINAS, LLC

By: _____
Name:
Title:

DUKE ENERGY PROGRESS, INC.

By: _____
Name:
Title: